

109TH CONGRESS
2D SESSION

H. R. 5604

To require motor vehicle operators transporting security sensitive material in commerce to obtain a permit from the Secretary of Homeland Security, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2006

Mr. DANIEL E. LUNGREN of California (for himself, Ms. LORETTA SANCHEZ of California, Mr. SHAYS, Mr. THOMPSON of Mississippi, Mr. SIMMONS, Ms. HARMAN, Mr. PEARCE, Ms. HARRIS, and Mr. McCAUL of Texas) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

To require motor vehicle operators transporting security sensitive material in commerce to obtain a permit from the Secretary of Homeland Security, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Screening Applied
5 Fairly and Equitably to Truckers Act of 2006” or the
6 “SAFE Truckers Act of 2006”.

1 **TITLE I—SURFACE**
2 **TRANSPORTATION SECURITY**

3 **SEC. 101. SURFACE TRANSPORTATION SECURITY.**

4 (a) IN GENERAL.—The Homeland Security Act of
5 2002 (6 U.S.C. 101 et seq.) is amended by adding at the
6 end the following:

7 **“TITLE XVIII—SURFACE**
8 **TRANSPORTATION SECURITY**

9 **“SEC. 1801. DESIGNATION OF SECURITY SENSITIVE MATE-**
10 **RIAL.**

11 “(a) DESIGNATION.—The Secretary shall designate a
12 material, or a group or class of material, in a particular
13 amount and form as security sensitive when the Secretary
14 determines that transporting the material by motor vehicle
15 in commerce poses a significant risk to homeland security
16 due to the potential use of the material in an act of ter-
17 rorism.

18 “(b) CONSULTATION.—In carrying out subsection
19 (a), the Secretary shall consult with—

20 “(1) the Secretary of Health and Human Serv-
21 ices, on the inclusion of chemical or biological mate-
22 rials or agents; and

23 “(2) the Secretary of Transportation, as appro-
24 priate.

1 “(c) NOTICE AND COMMENT.—The Secretary shall
2 make the designations under subsection (a) by regulation
3 after providing notice and an opportunity for public com-
4 ment.

5 **“SEC. 1802. SECURITY SENSITIVE MATERIAL PERMIT.**

6 “(a) IN GENERAL.—Beginning not later than one
7 year after the date of enactment of this title, the Secretary
8 shall prohibit an individual from operating a motor vehicle
9 in commerce while transporting a security sensitive mate-
10 rial unless the individual holds a security sensitive mate-
11 rial permit issued by the Secretary.

12 “(b) ISSUANCE OF PERMITS.—The Secretary may
13 issue a security sensitive material permit to an individual
14 if—

15 “(1) the individual holds a license to operate a
16 motor vehicle transporting hazardous material in
17 commerce in accordance with the requirements of
18 section 5103a of title 49, United States Code; and

19 “(2) after conducting a background check
20 under subsection (c), the Secretary determines that
21 the individual does not pose a terrorist security risk
22 warranting denial of the permit.

23 **“(c) BACKGROUND RECORDS CHECK.—**

24 “(1) IN GENERAL.—Before issuing a security
25 sensitive material permit to an individual, the Sec-

1 retary, in consultation with the Attorney General,
2 shall conduct a fingerprint-based background records
3 check of relevant criminal history databases regard-
4 ing the individual.

5 “(2) WRITTEN CONSENT.—A background
6 records check regarding an individual may be con-
7 ducted under this subsection only with the prior
8 written consent of the individual.

9 “(3) NOTIFICATION.—

10 “(A) IN GENERAL.—After conducting a
11 background records check regarding an indi-
12 vidual under this section, the Secretary shall—

13 “(i) notify the individual of the com-
14 pletion and results of the background
15 records check; and

16 “(ii) issue a security sensitive material
17 permit to the individual or deny issuance
18 of the permit.

19 “(B) LIMITATIONS ON DISCLOSURE.—In-
20 formation gathered under this section shall not
21 otherwise be disclosed.

22 “(d) EXPIRATION OF PERMITS.—A security sensitive
23 material permit issued to an individual shall expire at the
24 end of the 5-year period beginning on the date of issuance
25 of the permit or at the end of a shorter period established

1 by the Secretary by regulation. The Secretary may reissue
2 a security sensitive material permit to an individual before
3 the date of the permit's expiration after conducting a new
4 background records check regarding the individual under
5 subsection (c).

6 “(e) WAIVER PROCESS.—The Secretary shall pre-
7 scribe regulations that establish a waiver process for
8 issuing a security sensitive material permit to an indi-
9 vidual found to be otherwise ineligible for such a permit
10 under subsection (c). In deciding to issue a permit to such
11 an individual, the Secretary shall give consideration to the
12 circumstances of any disqualifying act or offense, restitu-
13 tion made by the individual, Federal and State mitigation
14 remedies, and other factors from which it may be con-
15 cluded that the individual does not pose a terrorism risk
16 warranting denial of the permit.

17 “(f) DENIAL OF WAIVER REVIEW.—

18 “(1) IN GENERAL.—The Secretary shall estab-
19 lish a review process before an administrative law
20 judge for individuals denied a waiver under sub-
21 section (e).

22 “(2) SCOPE OF REVIEW.—In conducting a re-
23 view under the process established pursuant to para-
24 graph (1), the administrative law judge shall be gov-
25 erned by the standards of section 706 of title 5,

1 United States Code. The substantial evidence stand-
2 ard in section 706(2)(E) of such title shall apply
3 whether or not there has been an agency hearing.
4 The judge shall review all facts on the record of the
5 agency.

6 “(3) CLASSIFIED EVIDENCE.—The Secretary,
7 in consultation with the National Intelligence Direc-
8 tor, shall issue regulations to establish procedures by
9 which the Secretary, as part of a review conducted
10 under this subsection, may provide to the individual
11 adversely affected by the determination an unclassi-
12 fied summary of classified evidence upon which the
13 denial of a waiver by the Secretary was based.

14 “(4) REVIEW OF CLASSIFIED EVIDENCE BY AD-
15 MINISTRATIVE LAW JUDGE.—

16 “(A) REVIEW.—As part of a review con-
17 ducted under this subsection, if the decision of
18 the Secretary was based on classified informa-
19 tion (as defined in section 1(a) of the Classified
20 Information Procedures Act (18 U.S.C. App.)),
21 such information may be submitted by the Sec-
22 retary to the reviewing administrative law
23 judge, pursuant to appropriate security proce-
24 dures, and shall be reviewed by the administra-
25 tive law judge ex parte and in camera.

1 “(B) SECURITY CLEARANCES.—Pursuant
2 to existing procedures and requirements, the
3 Secretary, in coordination (as necessary) with
4 the heads of other affected departments or
5 agencies, shall ensure that administrative law
6 judges reviewing negative waiver decisions of
7 the Secretary under this subsection possess se-
8 curity clearances appropriate for such review.

9 “(C) UNCLASSIFIED SUMMARIES OF CLAS-
10 SIFIED EVIDENCE.—As part of a review con-
11 ducted under this subsection and upon the re-
12 quest of the individual adversely affected by the
13 decision of the Secretary not to grant a waiver,
14 the Secretary shall provide to the individual and
15 reviewing administrative law judge, consistent
16 with the procedures established under para-
17 graph (1), an unclassified summary of any clas-
18 sified information upon which the decision of
19 the Secretary was based.

20 “(5) NEW EVIDENCE.—The Secretary shall es-
21 tablish a process under which an individual may sub-
22 mit a new request for a waiver, notwithstanding con-
23 firmation by the administrative law judge of the Sec-
24 retary’s initial denial of the waiver, if the request is
25 supported by substantial evidence that was not avail-

1 able to the Secretary at the time the initial waiver
2 request was denied.

3 “(g) APPEALS PROCESS.—The Secretary shall estab-
4 lish an appeals process under this section for individuals
5 found to be ineligible for a security sensitive permit that
6 includes notice and an opportunity for a hearing.

7 **“SEC. 1803. TRANSPORTATION WORKER IDENTIFICATION**
8 **CREDENTIAL INTEGRATION.**

9 “(a) INTEGRATION OF SECURITY SENSITIVE MATE-
10 RIAL PERMIT.—The Secretary shall modify the program
11 established under section 70105 of title 46, United States
12 Code, to allow the Secretary to issue a security sensitive
13 material permit to an individual as an integrated compo-
14 nent of a transportation security card.

15 “(b) MACHINE-READABLE ELEMENT.—A transpor-
16 tation security card referred to in subsection (a) shall indi-
17 cate the security sensitive material permit through a ma-
18 chine-readable element in electronic storage on the card.

19 “(c) FINGERPRINT LOCATIONS.—The Secretary
20 shall—

21 “(1) work with appropriate entities to ensure
22 that fingerprinting locations for individuals applying
23 for a transportation security card have flexible oper-
24 ating hours; and

1 “(2) permit an individual applying for a trans-
2 portation security card to utilize a fingerprinting lo-
3 cation outside of the individual’s State of residence
4 to the greatest extent practicable.

5 **“SEC. 1804. CONSIDERATION OF OTHER BACKGROUND**
6 **CHECKS.**

7 “(a) INDIVIDUALS HOLDING TRANSPORTATION SE-
8 curity CARDS.—An individual who holds a transpor-
9 tation security card issued under section 70105 of title
10 46, United States Code, shall be treated as having met
11 the requirements of section 1802(c).

12 “(b) REDUCTION IN FEES.—The Secretary shall re-
13 duce to the greatest extent practicable, any fees associated
14 with obtaining a security sensitive material permit under
15 section 1802 for any individual referred to in subsection
16 (a).

17 **“SEC. 1805. LIMITATION ON SHIPPERS OF SECURITY SEN-**
18 **SITIVE MATERIAL.**

19 “The Secretary shall prohibit a person from—

20 “(1) offering a security sensitive material for
21 transportation by motor vehicle in commerce; or

22 “(2) causing a security sensitive material to be
23 transported by motor vehicle in commerce,

1 unless the motor vehicle operator transporting the security
2 sensitive material holds a valid security sensitive material
3 permit.

4 **“SEC. 1806. AUTHORITY TO ENSURE COMPLIANCE.**

5 “(a) IN GENERAL.—The Secretary is authorized to
6 ensure compliance with this title.

7 “(b) MEMORANDUM OF UNDERSTANDING.—The Sec-
8 retary may enter into a memorandum of understanding
9 with the Secretary of Transportation to ensure compliance
10 with sections 1802(a), 1805, and 1810.

11 **“SEC. 1807. CIVIL PENALTIES.**

12 “(a) PENALTY.—

13 “(1) IN GENERAL.—A person that violates this
14 title or a regulation or order issued under this title
15 is liable to the United States Government for a civil
16 penalty of at least \$250 but not more than \$75,000
17 for each violation.

18 “(2) INCREASED PENALTIES.—If the Secretary
19 finds that a violation under paragraph (1) results in
20 death, serious illness, or severe injury to any person
21 or substantial destruction of property, the Secretary
22 may increase the amount of the civil penalty for
23 such violation to not more than \$100,000.

24 “(3) SEPARATE VIOLATIONS.—A separate viola-
25 tion occurs for each day the violation continues.

1 “(b) HEARING REQUIREMENT.—The Secretary may
2 find that a person has violated this title or a regulation
3 or order issued under this title only after notice and an
4 opportunity for a hearing. The Secretary shall impose a
5 penalty under this section by giving the person written no-
6 tice of the amount of the penalty.

7 “(c) PENALTY CONSIDERATIONS.—In determining
8 the amount of a civil penalty under this section, the Sec-
9 retary shall consider—

10 “(1) the nature, circumstances, extent, and
11 gravity of the violation;

12 “(2) with respect to the violator, the degree of
13 culpability, any history of prior violations, the ability
14 to pay, and any effect on the ability to continue to
15 do business; and

16 “(3) other matters that justice requires.

17 “(d) CIVIL ACTIONS TO COLLECT.—The Attorney
18 General may bring a civil action in an appropriate district
19 court of the United States to collect a civil penalty under
20 this section and any accrued interest on the civil penalty
21 as calculated in accordance with section 1005 of the Oil
22 Pollution Act of 1990 (33 U.S.C. 2705). In the civil ac-
23 tion, the amount and appropriateness of the civil penalty
24 shall not be subject to review.

1 “(e) COMPROMISE.—The Secretary may compromise
2 the amount of a civil penalty imposed under this section
3 before referral to the Attorney General.

4 “(f) SETOFF.—The Government may deduct the
5 amount of a civil penalty imposed or compromised under
6 this section from amounts it owes the person liable for
7 the penalty.

8 “(g) DEPOSITING AMOUNTS COLLECTED.—Amounts
9 collected under this section shall be deposited in the Treas-
10 ury as miscellaneous receipts.

11 **“SEC. 1808. CRIMINAL PENALTIES.**

12 “A person that knowingly violates this title or a regu-
13 lation or order issued under this title shall be fined under
14 title 18, United States Code, imprisoned for not more than
15 5 years, or both; except that the maximum amount of im-
16 prisonment shall be 10 years in any case in which the vio-
17 lation results in death or bodily injury to any person.

18 **“SEC. 1809. ENFORCEMENT.**

19 “(a) IN GENERAL.—At the request of the Secretary,
20 the Attorney General may bring a civil action in an appro-
21 priate district court of the United States to enforce this
22 title or a regulation or order issued under this title. The
23 court may award appropriate relief, including a temporary
24 or permanent injunction, punitive damages, and assess-
25 ment of civil penalties considering the same penalty

1 amounts and factors as prescribed for the Secretary in an
2 administrative case under section 1807.

3 “(b) IMMINENT SECURITY HAZARDS.—

4 “(1) IN GENERAL.—If the Secretary has reason
5 to believe that an imminent security hazard exists,
6 the Secretary may bring a civil action in an appro-
7 priate district court of the United States—

8 “(A) to suspend or restrict the transpor-
9 tation of the security sensitive material respon-
10 sible for the hazard; or

11 “(B) to eliminate or mitigate the hazard.

12 “(2) ACTIONS BY THE ATTORNEY GENERAL.—

13 On request of the Secretary, the Attorney General
14 shall bring an action under paragraph (1).

15 **“SEC. 1810. MOTOR VEHICLE OPERATORS REGISTERED TO**
16 **OPERATE IN MEXICO OR CANADA.**

17 “The Secretary shall prohibit a motor vehicle oper-
18 ator registered to operate in Mexico or Canada from oper-
19 ating a motor vehicle transporting a security sensitive ma-
20 terial in commerce in the United States until the operator
21 has undergone a background records check similar to the
22 background records check required for motor vehicle oper-
23 ators licensed in the United States to transport security
24 sensitive materials in commerce.

1 **“SEC. 1811. FEE AUTHORITY.**

2 “(a) IN GENERAL.—The Secretary may charge rea-
3 sonable fees for providing security sensitive material per-
4 mits and conducting background records checks under this
5 title.

6 “(b) FEE REQUIREMENTS.—The establishment and
7 collection of fees under this section shall be subject to the
8 following requirements:

9 “(1) The fees, in the aggregate, shall not exceed
10 the costs incurred by the Department of Homeland
11 Security associated with the program established
12 under this title.

13 “(2) The Secretary shall charge fees in
14 amounts that are reasonably related to the costs of
15 providing services in connection with the activity or
16 item for which the fee is charged.

17 “(3) A fee may not be collected except to the
18 extent such fee will be expended—

19 “(A) to pay for the costs of providing secu-
20 rity sensitive material permits and conducting
21 background records checks under this title;

22 “(B) to pay for the costs of reviewing and
23 adjudicating requests for waivers and appeals of
24 agency decisions with respect to providing secu-
25 rity sensitive material permits, performing

1 background record checks, and denying requests
2 for waivers and appeals under this title; and

3 “(C) to pay for any other costs related to
4 providing security sensitive material permits or
5 performing background record checks under
6 this title.

7 “(4) Any fee collected shall be available for ex-
8 penditure only to pay the costs incurred in providing
9 services in connection with the activity or item for
10 which the fee is charged and shall remain available
11 until expended.

12 **“SEC. 1812. TRANSITION.**

13 “(a) TREATMENT OF INDIVIDUALS RECEIVING PRIOR
14 HAZARDOUS MATERIALS ENDORSEMENTS.—An indi-
15 vidual who has obtained a hazardous materials endorse-
16 ment in accordance with section 1572 of title 49, Code
17 of Federal Regulations, before the date of enactment of
18 this title shall be treated as having met the requirements
19 of section 1802(c).

20 “(b) REDUCTION IN FEES.—The Secretary shall re-
21 duce, to the great extent practicable, any fees associated
22 with obtaining a security sensitive material permit under
23 this title for any individual referred to in subsection (a).

1 **“SEC. 1813. SAVINGS CLAUSE.**

2 “Nothing in the title shall be construed as affecting
3 the authority of the Secretary of Transportation to regu-
4 late hazardous materials under chapter 51 of title 49,
5 United States Code.

6 **“SEC. 1814. DEFINITIONS.**

7 “In this title, the following definitions apply:

8 “(1) COMMERCE.—The term ‘commerce’ means
9 trade or transportation in the jurisdiction of the
10 United States—

11 “(A) between a place in a State and a
12 place outside of the State; or

13 “(B) that affects trade or transportation
14 between a place in a State and a place outside
15 of the State.

16 “(2) HAZARDOUS MATERIAL.—The term ‘haz-
17 ardous material’ means a substance or material the
18 Secretary of Transportation designates under section
19 5103(a) of title 49, United States Code.

20 “(3) IMMINENT SECURITY HAZARD.—The term
21 ‘imminent security hazard’ means the existence of a
22 condition relating to security sensitive materials
23 that—

24 “(A) presents a substantial likelihood of a
25 terrorist attack that would result in death, seri-
26 ous illness, severe personal injury, or substan-

1 tial endangerment to health, property, or na-
2 tional security; and

3 “(B) may occur before the reasonably fore-
4 seeable completion date of a formal proceeding
5 begun to lessen the risk of that death, illness,
6 injury, or endangerment.

7 “(4) PERSON.—The term ‘person’, in addition
8 to its meaning under section 1 of title 1, United
9 States Code—

10 “(A) includes a government, Indian tribe,
11 or authority of a government or tribe offering
12 security sensitive material for transportation in
13 commerce or transporting security sensitive ma-
14 terial to further a commercial enterprise; but

15 “(B) does not include—

16 “(i) the United States Postal Service;
17 and

18 “(ii) in section 1807 and 1808, a de-
19 partment, agency, or instrumentality of the
20 Government.

21 “(5) SECURITY SENSITIVE MATERIAL.—The
22 term ‘security sensitive material’ means a substance
23 or material in quantity and form the Secretary des-
24 ignates under section 1801.

1 “(6) SECURITY SENSITIVE MATERIAL PER-
 2 MIT.—The term ‘security sensitive material permit’
 3 means a permit issued under section 1802.

4 “(7) TRANSPORTS; TRANSPORTATION.—The
 5 term ‘transports’ or ‘transportation’ means the
 6 movement of property and loading, unloading, or
 7 storage incidental to the movement.”.

8 **SEC. 102. CONFORMING AMENDMENT.**

9 The table of contents contained in section 1(b) of the
 10 Homeland Security Act of 2002 (116 Stat. 2135) is
 11 amended by adding at the end the following:

“TITLE XVIII—SURFACE TRANSPORTATION SECURITY

“Sec. 1801. Designation of security sensitive material.

“Sec. 1802. Security sensitive material permit.

“Sec. 1803. Transportation worker identification credential integration.

“Sec. 1804. Consideration of other background checks.

“Sec. 1805. Limitation on shippers of security sensitive material.

“Sec. 1806. Authority to ensure compliance.

“Sec. 1807. Civil penalties.

“Sec. 1808. Criminal penalties.

“Sec. 1809. Enforcement.

“Sec. 1810. Motor vehicle operators registered to operate in Mexico or Canada.

“Sec. 1811. Fee authority.

“Sec. 1812. Transition.

“Sec. 1813. Savings clause.

“Sec. 1814. Definitions.”.

12 **TITLE II—MISCELLANEOUS**
 13 **PROVISIONS**

14 **SEC. 201. TASK FORCE ON HIGHWAY SECURITY.**

15 (a) ESTABLISHMENT.—The Secretary of Homeland
 16 Security shall establish a task force to assess security risks
 17 to motor vehicles transporting security sensitive material,

1 including the vulnerabilities of such motor vehicles to hi-
2 jacking, en route sabotage, theft, and insider threats.

3 (b) MEMBERSHIP.—The task force shall be composed
4 of representatives of the Department of Homeland Secu-
5 rity, the Department of Transportation, and representa-
6 tives of appropriate industry officials, including employee
7 organizations.

8 (c) REPORT.—Not later than 180 days after the date
9 of enactment of this Act, the task force shall transmit to
10 the Secretary and Congress a report containing the results
11 of the assessment, including proposed solutions for any
12 vulnerabilities identified.

13 **SEC. 202. TASK FORCE ON DISQUALIFYING CRIMES.**

14 (a) ESTABLISHMENT.—The Secretary of Homeland
15 Security shall establish a task force to review the lists of
16 crimes that disqualify individuals from certain transpor-
17 tation-related employment under current regulations of
18 the Transportation Security Administration and assess
19 whether such lists of crimes are accurate indicators of a
20 terrorism security risk.

21 (b) MEMBERSHIP.—The task force shall be composed
22 of representatives of appropriate industries, including rep-
23 resentatives of employee organizations, and Federal agen-
24 cies.

1 (c) REPORT.—Not later than 180 days after the date
2 of enactment of this Act, the task force shall transmit to
3 the Secretary and Congress a report containing the results
4 of the review, including recommendations for a common
5 list of disqualifying crimes and the rationale for the inclu-
6 sion of each crime on the list.

7 **SEC. 203. TASK FORCE ON REDUNDANT CHECKS.**

8 (a) ESTABLISHMENT.—The Secretary of Homeland
9 Security, in consultation with the Attorney General, the
10 Secretary of Defense, and the Secretary of Energy, shall
11 establish a task force to review—

12 (1) all Federal Government background check,
13 vetting, and clearance programs; and

14 (2) the fees imposed under such programs.

15 (b) MEMBERSHIP.—The task force shall be composed
16 of representatives of appropriate Federal agencies.

17 (c) GOAL.—The task force shall focus on the goal of
18 creating a Government-wide system of background checks
19 to reduce redundancy and minimize the costs paid by the
20 individuals subject to such checks.

21 (d) REPORT.—Not later than 180 days after the date
22 of enactment of this Act, the task force shall transmit to
23 the Secretary and Congress a report containing its find-
24 ings.

